

STATE OF MICHIGAN
COURT OF APPEALS

In re M. WALTERS, Minor.

UNPUBLISHED

August 13, 2020

No. 352273

Jackson Circuit Court

Family Division

LC No. 17-002336-NA

Before: MURRAY, C.J., and CAVANAGH and SWARTZLE, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor child, MW, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and MCL 712A.19b(3)(j) (reasonable likelihood that child will be harmed if returned to parent). Finding no error, we affirm. This appeal is being decided without oral argument under MCR 7.214(E)(1).

I. FACTS

In September 2017, the Department of Health and Human Services (DHHS) submitted a petition and request to the trial court to place MW and his minor siblings in the care and custody of the DHHS. The DHHS alleged that the conditions of mother’s home were endangering the children’s health, safety, and welfare, and that the children were at imminent risk of substantial harm. According to the petition, mother failed to benefit from services already being offered to her, including on-going children’s protection services (CPS) monitoring and safety planning, Families First, law enforcement investigations, referral for in-home counseling, referral for Early-On Services, Head Start, a substance-abuse assessment referral, referral to a depression and anxiety support group, High Fields, and referral to therapy. Mother also caused injury to MW’s older brother, and mother failed to properly supervise MW. The DHHS also alleged that mother said that she “no longer wants [MW] because he urinated on himself.”

CPS substantiated a complaint against mother in June 2010, because MW was born positive for marijuana. CPS substantiated a complaint against mother in January 2016, after she attempted to commit suicide by drinking bleach while the minor children were in her care. CPS found by a preponderance of the evidence that mother physically abused (“whooped with a belt”) MW’s brother in September 2017, and mother reported that she intended to release her parental rights to two of her other children. On September 1, 2017, CPS received a complaint of improper

supervision of MW when mother forced him to walk 8 to 10 blocks home alone while wrapped in a blanket and not appropriately dressed for the weather because he had urinated on himself, after which the police were dispatched, mother was uncooperative with the police, and the police placed MW in the care of his uncle. A Families First worker reported that she had reviewed appropriate discipline and parenting skills with mother, and mother was interviewed by CPS in September 2017, at which time she stated, “I don’t care what happens with [MW],” because “I don’t want my house pissy, I don’t want it in my car, I don’t want it touching me. This has been going on since birth, nothings been done for it and I’m tired of it,” “[MW] is mentally retarded, he has [attention deficit hyperactivity disorder (ADHD)], he kills animals, and he got kicked off the bus for spitting on teachers,” “I don’t care anymore. I don’t care what happens with [MW]. Maybe he’ll learn his lesson for peeing on himself. I don’t care anymore,” and “if you are gonna take my kids just do it.” Mother pleaded no-contest to the allegations in the petition.

MW was removed from mother’s care in September 2017, and was placed in a nonrelative, licensed foster home, where he continued to be placed through the termination hearing in December 2019. Mother was offered services, including parenting classes, case management, aid in obtaining appropriate housing and employment, and counseling. By the summer of 2019, mother was able to have unsupervised, overnight visits with MW. However, after CPS substantiated allegations of abuse that mother slashed the couches of her other children’s father in the presence of the children, and mother showed little to no interest in caring for MW, the DHHS requested that mother’s visits be once again supervised. Mother missed the next 10 visits with MW, and failed to communicate with the DHHS for over two months. Mother also failed to show benefit from her services, including continuing to harbor unreasonable expectations of MW and inability to manage her stressors.

The trial court subsequently entered an order terminating mother’s parental rights. The trial court found that the DHHS made reasonable efforts to preserve and unify the family, but the efforts were unsuccessful. The trial court determined by clear and convincing evidence that (1) 182 or more days elapsed since the issuance of the original dispositional order, and the conditions that led to the adjudication continued to exist, and (2) there was a reasonable likelihood that the child would be harmed if he was returned to mother’s care. Therefore, the trial court determined that petitioner proved the statutory bases for termination under MCL 712A.19b(3)(c)(i) and (j). The trial court then determined that termination of mother’s parental rights was in the child’s best interests.

II. ANALYSIS

Mother argues that the trial court erred by finding statutory grounds to terminate her parental rights. We conclude that the trial court did not clearly err by finding statutory grounds for termination.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). The trial court’s termination determinations are reviewed for clear error. MCR 3.977(K); *In re VanDalen*, 293 Mich App at 139. “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special

opportunity to observe the witnesses.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted).

The trial court did not clearly err by determining that there was clear and convincing evidence to support termination of mother’s parental rights under MCL 712A.19b(3)(c)(i).¹ Termination of parental rights is proper under this statutory subsection when “the totality of the evidence amply supports that [the respondent] had not accomplished any meaningful change in the conditions” that led to the trial court taking jurisdiction over the child, *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009), and “there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age,” MCL 712A.19b(3)(c)(i).

The initial disposition order was entered in September 2017, and the trial court terminated mother’s parental rights in December 2019. Therefore, “182 or more days” had “elapsed since the issuance of an initial disposition order.” See MCL 712A.19b(3)(c). The trial court found that termination was proper under subsection (3)(c)(i) because mother failed to rectify her parenting issues, reasoning that there was no reasonable likelihood that the condition would be rectified in a reasonable amount of time considering the child’s age.

In more than 27 months since the child’s removal, mother failed to accomplish any meaningful change in the conditions that led to the trial court taking jurisdiction over the minor child. See *Williams*, 286 Mich App at 272. The initial conditions that led to the adjudication were mother’s physical abuse of MW’s brother and improper supervision of MW when mother forced him to walk home alone inappropriately dressed for the weather because he had urinated on himself. At the time, mother stated that she did not care what happened to MW, that he was “mentally retarded,” that she did not want her house or car “pissy,” and that she did not care about him anymore. The trial court considered mother’s psychological evaluation—during which mother admitted to feeling overwhelmed by parenting—that stated that mother was prone to become easily overwhelmed, frustrated, and inconsistent in her delivery of care to her children. The trial court noted that mother testified that she continued to feel overwhelmed, and noted that the psychological evaluation indicated that mother was self-oriented, excessively sensitive, would have difficulty subjugating her needs to the needs of a child, and that her overall prognosis was poor because her problems were fairly long term in nature.

The trial court found that mother did not benefit from parenting classes or counseling because the evidence suggested that mother had not learned how to manage circumstances which led to her becoming overwhelmed. The court stated that mother missing her first 10 supervised visits with MW in the fall of 2019 was evidence that her response to being overwhelmed was to not attend parenting time. Furthermore, the trial court noted that mother’s response to not taking MW to soccer and to miss parenting time was that she had not signed MW up for soccer. The trial court stated that the “proof [was] in the pudding” that mother did not benefit from services as evidenced by her poor response to parenting challenges. The trial court also noted the letter from

¹ Although we do not address the additional statutory grounds for termination, *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009), we do note that, having reviewed the record, there was also clear and convincing evidence to support termination under MCL 712A.19(3)(j), and the trial court did not clearly err by terminating on that ground.

the Head Start worker that mother was unable to manage the care and development of her twin daughters for long periods because she became overwhelmed, and her ability to parent and make appropriate decisions concerning the children's care appeared to break down. The letter also noted that mother demonstrated difficulty in following through with her own individual services. Although the court recognized that mother "may have made some moderate progress during the course of the 27 months but she has not made enough," it nonetheless noted that mother showed a pattern, and there was no evidence that the pattern had been broken.

The trial court found that mother would not be able to rectify the barriers in a reasonable amount of time:

[H]ow much longer would it take for [mother] . . . for me to have the comfort that she in fact has sufficiently addressed the barriers to reunification that MW could safely be sent home with her[?] Twenty-seven more months? Who knows. It's certainly not something that's going to happen in a few weeks

The lower court record supported that, at the time of termination, mother failed to rectify her parenting issues that brought MW into care and that she would not be able to do so in a reasonable amount of time considering MW's age. Given the facts presented that mother made little progress in 27 months, the trial court did not clearly err in finding that mother's parental rights could be terminated under MCL 712A.19b(3)(c)(i) by clear and convincing evidence. The trial court record supported the trial court's conclusion that there was no reasonable likelihood that the condition would be rectified within a reasonable time considering the minor child's age, and that termination was proper under MCL 712A.19b(3)(c)(i). See *In re VanDalen*, 293 Mich App at 139.

We also conclude that the trial court did not clearly err by determining by a preponderance of the evidence that termination of mother's parental rights was in the best interests of the child.

A trial court must find by a preponderance of the evidence that termination is in the child's best interests before it can terminate parental rights. *In re Moss*, 301 Mich App at 90. " 'If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.' " *Id.* at 83, quoting MCL 712A.19b(5). The trial court's termination determinations are reviewed for clear error. MCR 3.977(K); *In re VanDalen*, 293 Mich App at 139. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App at 80 (quotation marks and citation omitted).

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. The court may consider "the child's bond to the parent[;] the parent's parenting ability[;] the child's need for permanency,

stability, and finality[;] and the advantages of a foster home over the parent's home.” *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). “The trial court may also consider . . . the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption.” *In re White*, 303 Mich App at 714. At this stage, the interest of the child in a stable home is superior to any interest of the parent. *In re Medina*, 317 Mich App 219, 237; 894 NW2d 653 (2016).

In determining the best interests of MW, the trial court found that mother's bond with MW was “weak at best,” as evidenced by the lack of affection between mother and MW. The court noted that the evidence did not show that MW missed mother, or that mother missed MW, and that there “was no affection or very little at best.” Furthermore, the court noted the testimony that there was a “very strong bond with the foster parents.”

In contrast, the record indicated that MW was progressing under the care of his foster family, who was meeting all his needs. The trial court noted that MW was thriving in the care of his foster family, who wanted to adopt him, and MW could not ever thrive in mother's care, “[e]ven if she were marginally successful in addressing the problems that brought him into care he's not going to thrive in that home.” Furthermore, MW needed permanency, stability, and finality, and he found that in his foster home.

In considering MW's best interests, the trial court addressed his bond to mother; mother's parenting ability; MW's need for permanency, stability, and finality; the advantages of the foster home over mother's home; mother's lack of benefit from her case service plan; MW's well-being while in care; MW's time spent in care; the amount of time MW would be required to wait for mother to rectify her barriers; mother's visitation with MW; and the possibility of adoption, all of which it found favored termination. See *In re Olive/Metts Minors*, 297 Mich App at 41-42; see also *In re White*, 303 Mich App at 714. In light of the foregoing, we hold that there was no clear error in the trial court's conclusion that termination of mother's parental rights was in the child's best interests. See MCL 712A.19b(5); *In re VanDalen*, 293 Mich App at 139.

Affirmed.

/s/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Brock A. Swartzle